



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2018-1062]**

**RIN 1625-AA08**

**Safety Zone; Mississippi Canyon Block 20, South of New Orleans, LA, Gulf of Mexico**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone around the research vessel OCEAN INTERVENTION II operating in the Mississippi Canyon Block 20 in the Gulf of Mexico. The safety zone encompasses all navigable waters within a 500-yard radius of the vessel. The safety zone is needed to protect persons, vessels, and the marine environment from hazards associated with the vessel's limited maneuverability while it deploys underwater equipment and conducts research activity. Persons and vessels are prohibited from entering or remaining in this zone unless specifically authorized by the Captain of the Port Sector New Orleans or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 8 p.m. on December 4, 2018. For the purposes of enforcement, actual notice will be used from 6 a.m. on December 2,

2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1062 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Lieutenant Commander Benjamin Morgan, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2281, email Benjamin.P.Morgan@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector New Orleans
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MM	Mile marker
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by December 2, 2018 and lack

sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be contrary to the public interest because immediate action is necessary to respond to potential hazards associated with sub-surface research operations.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector New Orleans (COTP) has determined that a temporary moving safety zone is necessary to provide for the safety of persons, vessels, and the marine environment during sub-surface research operations in the vicinity of the Mississippi Canyon Block 20. Potential hazards include the risk of injury or pollution if normal vessel traffic were to interfere with the vessel's movement or deployed equipment. The survey activities are scheduled to take place from 6 a.m. on December 2, 2018 through 8 p.m. on December 4, 2018, in the navigable waters of the Mississippi Canyon Block 20, South of New Orleans, LA, in the Gulf of Mexico. This rule is needed to protect persons, vessels, and the marine environment from hazards associated with the vessel's limited maneuverability while it deploys underwater equipment and conducts research activity.

### **IV. Discussion of the Rule**

This rule establishes a temporary moving safety zone from 6 a.m. on December 2, 2018 through 8 p.m. on December 4, 2018. The safety zone will cover all navigable waters within 500 yards of the vessel OCEAN INTERVENTION II and equipment being

used by personnel to conduct sub-surface research in Mississippi Canyon Block 20, South of New Orleans, LA, in the Gulf of Mexico. The duration of the zone is intended to protect persons, vessels, and the marine environment on these navigable waters while research is being conducted. No vessel or person will be permitted to enter or remain the safety zone without obtaining permission from the COTP or a designated representative. Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at (504) 365-2200. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has

not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This safety zone will restrict vessel traffic from entering or remaining within a 500 yard area around a research vessel for approximately three days. Vessels can safely transit around the zone, which impacts a small area of the Gulf of Mexico. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction

and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 3 days that will prohibit entry within 500 yards of the research vessel being used for sub-surface research. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination will be made available in the docket where indicated under **ADDRESSES**.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-1062 to read as follows:

§ 165.T08-1062 Safety Zone; Mississippi Canyon Block 20, South of New Orleans, LA, Gulf of Mexico.

(a) Location. The following area is a safety zone: all navigable waters within a 500 yard radius around the research vessel OCEAN INTERVENTION II in Mississippi Canyon Block 20, South of New Orleans, LA, in the Gulf of Mexico.

- (b) Effective period. This section is effective from 6 a.m. on December 2, 2018



through 8 p.m. on December 4, 2018.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into or remaining within this zone is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at (504) 365-2200.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) Information broadcasts. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: November 27, 2018

K. M. Luttrell,

Captain, U.S. Coast Guard,

Captain of the Port Sector New Orleans.

[FR Doc. 2018-26147 Filed: 11/30/2018 8:45 am; Publication Date: 12/3/2018]